RESPONSE REQUESTED

ORIGINAL

Supreme Court, U.S.
FILED
MAR 9 1994
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE THE MARRIAGE OF
ROBERT P. LANGE,

Petitioner,

v.

ELIZABETH A. LANGE,

Respondent.

No. 93-785

MOTION TO PROCEED IN FORMA PAUPERIS

The respondent, Elizabeth A. Lange, moves the Court for leave to proceed in forma pauperis and to file a response to petition for writ of certiorari without payment of fees and costs, and in support thereof shows the Court as follows:

1. On or about November 17, 1993, the petitioner filed a petition for writ of certiorari with the Supreme Court of the United States, October Term, 1993, as appears from the petition for writ of certiorari on file herein.

2. The respondent is unable to pay the fees and costs of this proceeding or to give security therefore as is more particularly shown by the attached Affidavit, Exhibit A.

3. The respondent cannot afford to retain an attorney and has been unable to obtain representation by counsel to represent her in the proceedings in the Supreme Court of the United States.

WHEREFORE, the respondent prays that she be allowed to proceed in forma pauperis and to file a response to the petition for certiorari without payment of fees and costs, and for such other relief as the Court deems just and equitable.

Dated this 8th day of March, 1994.

Elizabeth A. Lange

ELIZABETH A. LANGE

IN THE

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IN RE THE MARRIAGE OF
ROBERT P. LANGE,

Petitioner,

v.

ELIZABETH A. LANGE,

Respondent.

No. 93-785

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Elizabeth A. Lange, being first duly sworn, depose and say that I am the respondent in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefore, I state that because of my poverty, I am unable to pay the costs of said proceeding or to give security therefore; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following: Response to petition for writ of certiorari.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the costs of prosecuting the appeal are true.

1. Are you presently employed?

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

   b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

Answer to Question No. 1:

Yes. All Metals Stamping, Abbotsford, Wisconsin. $1,513.60 per month gross income.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other source?

   a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

Answer to Question No. 2: No.

3. Do you own any cash or checking or savings account?

   a. If the answer is yes, state the total value of the items owned.

Answer to Question No. 3:

Yes. Total value: $200.00.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

Answer to Question No. 4:

1984 Nissan: Value: $800.00.

5. List the person who are dependent upon you for support and state your relationship to those persons.

Answer to Question No. 5:

Krystle: Daughter

Melissa: Daughter

Ashley: Daughter

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Elizabeth A. Lange

ELIZABETH A. LANGE

Subscribed and sworn to before me
this 8th day of March, 1994.

Joan M. Williams

Notary Public, State of Wisconsin
My commission: 1-29-95 Expiration

Let the applicant proceed without prepayment of costs or fees or the necessity or giving security therefor.

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No. 93-785

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Elizabeth A. Lange ("Elizabeth") and Robert P. Lange ("Robert") were divorced in Clark County Circuit Court, Clark County, Wisconsin on October 2, 1990. Both parties requested custody of the minor daughters, Krystle, Melissa, and Ashley, ages 12, 10 and 7, respectively. After trial, the trial court awarded legal custody and primary physical placement of the daughters to Elizabeth and awarded supervised visitation to Robert stating:

> "Consequently, the Court finds that it is appropriate to award the respondent (Robert) reasonable visitation supervised by a proper person approved by the Clark County Department of Social Services. The supervised visitation should take place for a reasonable period of time and when it is shown that he can exercise visitation without imposing his fundamental religious beliefs upon the children, the Court may remove the

supervision requirement. If this does not occur, then the petitioner (Elizabeth) can petition the Court for further restrictions." (Petitioner's Appendix, B8).

Section 767.001(2m) of the Wisconsin Statutes gives Elizabeth as the custodial parent the sole right to choose the religion of the children. As the Wisconsin Appellate Court indicated:

> "Because Sec. 767.001(2m), Stats., confers on Elizabeth as the custodial parent the sole right to chose the religion of the children, the trial court possesses discretion to fashion reasonable restrictions to protect her choice. First, §767.24(1), Stats., empowers the Court to make just and reasonable provisions regarding custody and placement. The Court may therefore place reasonable restrictions on visitation. Second, the custodial parent's exclusive right to choose the religion is meaningless without protection from subversion. Since Robert, as the noncustodial parent, has no right to participate in the choice, he cannot complain if his visits with the children are reasonably restricted to protect Elizabeth's choice." (Petitioner's Appendix, B9).

Robert does not contest the constitutionality of §767.001(2) or §767.24(1), Wis. Stats. He argues that the restriction, however, acts as an absolute veto by Elizabeth over Robert's constitutional right to free exercise of his religious beliefs.

The Wisconsin Court of Appeals decision is in accordance with settled principles established by the Supreme Court's Decision in Employment Division, Department of Human Resources v. Smith, 494 U.S. 872, 877 (1990).

A parent's constitutional right to direct the religious upbringing of his/her children is not entirely free from limitation. Wisconsin v. Yoder, 406 U.S. 205,

232, 92 S.Ct. 1526, 1542 (1972). The Wisconsin Court of Appeals correctly applied this Court's reasoning in Smith, when it stated:

> "Free exercise of religion does not necessarily mean the right freely to act in conformity with a religion. 'The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires'. Employment Division, Department of Human Resources v. Smith, 494 U.S. 872, 877 (1990). The United States Supreme Court has 'never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the state is free to regulate.' Id. Nor has the United States Supreme Court ever held 'that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from government regulation.' Id.
>
> ...A restriction on such conduct is permissible so long as prohibiting the exercise of religion is not the object of a valid law but is merely the incidental effect of such a law. Id.
>
> Limiting Robert's religious conduct is not the object of the visitation restriction. It is the incidental effect of securing Elizabeth's right under a valid law, the custody statute, to choose the children's religion. To this point, Robert's discussions and teaching activities have been inextricable parts of a course of conduct which has interfered with Elizabeth's choice of religion for the children... ." (Petitioner's Appendix, B12-13).

This is not a "hybrid" situation because Robert lost the parental right to choose his children's religion by operation of §767.001(2m), Wis. Stats., a statute which Robert has not claimed violates the constitution. That statute does not nullify Robert's right to believe and profess whatever religious doctrine he desires; it precludes him from infringing upon Elizabeth's right under a valid law to choose the children's religion.

The specific visitation restriction was a reasonable exercise of the Trial Court's discretion based upon facts that were clearly adverse to Robert's position.

Robert lost the right to have input into the children's choice of religion when the Court awarded custody to Elizabeth and conferred upon her the right to choose the religion for the children under §767.001(2m), Wis. Stats. The Trial Court did not give Elizabeth a veto over Robert's religious speech, only upon the imposition of his fundamentalist religious views on the children. This restriction was exercised by the trial court in its discretion on the basis of facts before it.

Extensive testimony and other evidence relating to Robert's religious views and his actions during visitation was presented at trial. The trial court heard evidence that Robert's religion was the focal point of his life and that it was Robert's intention to make his religious beliefs the focal point of the children's lives. Those beliefs would dictate a lifestyle for the children which would be, in many ways, diametrically opposed to those of Elizabeth. Robert's religious beliefs dictated that the female is to be subservient to the male in a marriage environment and that the female is to be a housewife only and not work outside the home. Robert believes that the religious holidays of Christmas and Easter are "garbage". He refused to allow the children to have dolls or other stuffed animals or clothing with bold designs. Children's activities such as Girl

Scouts are contrary to his beliefs. The children told Elizabeth that if she keeps going to the Lutheran Church, she is going to go to hell and that she shouldn't be working; if she loved them, she would stay home with them and not work.

The Department of Social Services study indicated that Robert focuses excessively on religious beliefs to the detriment of placing his children's needs first and that his discussions with his daughters concerning his discontent with Elizabeth's parenting and lifestyle places the children in an unfair and dangerous position. The social worker felt that Robert would inhibit the girls from being able to experience events that would enhance the formation of their decision making skills, ability to interact with others and development of values and morals.

These are only some of the examples of the facts which the Trial Court, in its discretion, relied upon to fashion the visitation restriction. That restriction was based in part upon the Trial Court's finding that:

> "...The children are comfortable with both parties, however, there is a problem with the children orally berating their mother. Both parties evince love for the children, however the respondent indicates he desires custody because he is with the Lord. The respondent makes moral determinations based upon his religious beliefs and imposes those on the children. The respondent's religious beliefs concerning the role of females is detrimental to the children and the children are confused by the different religious teachings of the parties. Although the Social Services study indicated that counseling may be appropriate, the Court believes that counseling

would not work here because the counselor can only be someone who is agreeable with the respondent (Robert) and has similar beliefs. The respondent indicates that he intends to follow God's order not the Court's... ." (Petitioner's Appendix, B6-7).

For the reasons stated in this response, the petition for writ of certiorari should be denied.

Dated this 9th day of March, 1994.

Respectfully submitted,

Elizabeth A. Lange

ELIZABETH A. LANGE

ELIZABETH A. LANGE
P. O. Box 23
Abbotsford, WI 54405-0023

March 9, 1994

**SUPREME COURT OF THE
UNITED STATES**
Office of the Clerk
Washington, DC 20543-0001

RE: Robert P. Lange v. Elizabeth A. Lange
Case No. 93-785

Dear Clerk:

I enclose herewith for filing the original of the following documents:

1. Motion to Proceed in Forma Pauperis.

2. Affidavit in Support of Motion to Proceed in Forma Pauperis.

3. Response to Petition for Writ of Certiorari.

By copy of this correspondence, copies of the above documents are being sent to the attorneys for the petitioner.

Very truly yours,

Elizabeth A. Lange

ELIZABETH A. LANGE

Enclosures

CC: Alexis I. Crow (w/encls.)
Richard D. Martin (w/encls.)
Thomas P. Guszkowski (w/encls.)

RECEIVED
MAR 11 1994
OFFICE OF THE CLERK
SUPREME COURT, U.S.